

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PETER SHARMA,

Case No.: 2:18-cv-02087-APG-EJY

Plaintiff

Order Accepting Report and Recommendation, Overruling Objection, and Dismissing Case Without Prejudice

STATE OF ARIZONA,

[ECF No. 5]

Defendant

8 Plaintiff Peter Sharma sues the State of Arizona for what he contends is an unlawful
9 conviction. ECF No. 1-1. He requests that I order the Arizona court to set aside his conviction
10 and award him monetary compensation for four years he spent in prison. *Id.* at 2.

11 Magistrate Judge Foley recommended that I dismiss the claims against the State of
12 Arizona because a State is not a person under 42 U.S.C. § 1983. ECF No. 5. He also
13 recommended that I dismiss the case without prejudice because Sharma seeks compensation for
14 a conviction that has not been reversed, expunged, or otherwise declared invalid. *Id.* Sharma
15 objects, arguing the merits of his underlying conviction. ECF No. 7.

16 I accept Judge Foley's recommendation that I dismiss the State of Arizona. A State is not
17 a "person" within the meaning of 42 U.S.C. § 1983. *Will v. Michigan Dep't of State Police*, 491
18 U.S. 58, 66, 71 (1989).

19 I deny leave to amend to name a proper defendant because Sharma has not shown his
20 conviction has been invalidated. Under the rule announced in *Heck v. Humphrey*, if a judgment
21 in the plaintiff's favor "would necessarily imply the invalidity of his conviction or sentence . . .
22 the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or
23 sentence has already been invalidated." 512 U.S. 477, 487 (1994).

1 Sharma's complaint necessarily challenges his criminal conviction because he contends
2 there was insufficient evidence to support it, he seeks to have it set aside, and he requests
3 compensation for his years of imprisonment. Sharma has not shown that as of this date his
4 criminal conviction has been invalidated. Accordingly, I dismiss Sharma's complaint without
5 prejudice to Sharma filing a new complaint should his criminal conviction later be invalidated.

6 IT IS THEREFORE ORDERED that Magistrate Judge Foley's report and
7 recommendation (**ECF No. 5**) is accepted, plaintiff Peter Sharma's objection (**ECF No. 7**) is
8 overruled, and the complaint (**ECF No. 1-1**) is **DISMISSED** without prejudice. The clerk of
9 court is instructed to close this case.

10 DATED this 13th day of August, 2019.

11 
12 ANDREW P. GORDON
13 UNITED STATES DISTRICT JUDGE

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